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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/700,128	11/03/2003	Steve Simianer	1539.1000	3716

23649 7590 01/26/2005
HANES & SCHUTZ, P.C.
102 S. TEJON ST.
SUITE 800
COLORADO SPRINGS, CO 80903

EXAMINER

EDELL, JOSEPH F

ART UNIT PAPER NUMBER

3636

DATE MAILED: 01/26/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/700,128

Applicant(s)

SIMIANER, STEVE

Examiner

Joseph F Edell

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 04 November 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 9-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 9-15 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 03 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 4, 7, 9, 12, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 1,322,959 to Sawasaki.

Sawasaki discloses a reinforcer that includes all the limitations recited in claims 1, 4, 7, 9, 12, and 15. Sawasaki shows a reinforcer having a flexible panel 6 (Fig. 2) with inner and outer perimeters that define an opening 16 (Fig. 5), and at least one tightener 9,13 (Fig. 3) secured at the inner and outer perimeters wherein the tightener is a drawstring wherein the flexible pane is *capable* of opening against a sitting surface and a supporting surface and the edge of the flexible panel is *capable* of encircling the edge of a seat.

3. Claims 1, 5, 7, 9, 13, and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,946,221 to Livingston.

Livingston discloses a reinforcer that includes all the limitations recited in claims 1, 5, 7, 9, 13, and 15. Livingston shows a reinforcer having a flexible panel 12 (Fig. 1) with inner and outer perimeters that define an opening 19 (Fig. 1), and at least one tightener 22 (Fig. 2) secured at the inner and outer perimeters wherein the tightener is

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an elastic strip wherein the flexible pane is *capable* of opening against a sitting surface and a supporting surface and the edge of the flexible panel is *capable* of encircling the edge of a seat.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 2, 3, 5, 6, 10, 11, and 13-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sawasaki in view of Livingston.

Sawasaki discloses a reinforcer that is basically that same as that recited in claims 2, 3, 5, 6, 10, 11, and 13-15 except that the at least one tightener is secured to each of the inner and outer perimeters and is not an elastic strip, as recited in the claims. Livingston shows a reinforcer similar to that of Sawasaki wherein the reinforcer has an elastic strip 22 (Fig. 2). In addition, the duplication of parts for a multiplied effect has no patentable significance. Therefore, it would have been well within the purview and obvious to one skilled in the art at the time the invention was made to provide a tightener on each of the inner and outer perimeters that is an elastic strip for enhancing the safety and strength of the reinforcer by further securing the perimeters that is configured to pass through a hole in the sitting surface. One would have been motivated to modify the tightener such that it is an elastic strip in view of the suggestion

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in Livingston that the elastic strip stretches to fit over a seat. Lastly, any tightener of reasonable size inherently meets the intended use in claims 6 and 14 citing that the tightener is configured to pass through a hole in the sitting surface of the seat.

Response to Arguments

6. Applicant's arguments filed 04 November 2004 have been fully considered but they are not persuasive. In response to applicant's argument that both and Sawasaki and Livingston fail to disclose a reinforcer with a opening against and capable of encircling a sitting surface and supporting surface of a seat, a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Applicant's specification does not disclose any structural dimensions defining the flexible panel and opening size that would convey to one of ordinary skill in the art that the reinforcer is sized in any manner differently than the reinforcers disclosed in Sawasaki and Livingston. With respect to Sawasaki, the reinforcer is dimensioned such that the opening is capable of lying against and encircling the edge of a sitting surface and supporting surface on a bicycle seat. With respect to Livingston, the reinforcer is

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dimensioned such that the opening is capable of lying against and encircling the edge of a sitting surface and supporting surface of an infant seat when the infant is not present.

The rejection under 35 USC 103(a) drawn toward claims 2, 3, 5, 6, 10, 11, 13, and 15 was argued solely on the premise that the cited art does not teach or suggest the reinforcer defined in amended claims 1 and 9, and as a result the above 35 USC 103(a) rejection of claims 2, 3, 5, 6, 10, 11, 13, and 15.

Upon consideration of the Applicant's arguments, Examiner maintains the rejections of claims 1-7 and 9-15.

Conclusion


7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (703) 605-1216. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


JE
January 24, 2005


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600